

SUBCHAPTER B—FARM MARKETING QUOTAS, ACREAGE ALLOTMENTS, AND PRODUCTION ADJUSTMENT

PART 735—COTTON WAREHOUSES

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DEFINITIONS

§ 735.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 735.2 Terms defined.

For the purpose of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241–273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to

whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) *Administrator.* The Administrator of the Service or any other officer or employee of the Service to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(e) *Designated representative.* The Administrator.

(f) *Regulations.* Rules and regulations made under the act by the Secretary.

(g) *Department.* The United States Department of Agriculture.

(h) *Service.* The Farm Service Agency of the U.S. Department of Agriculture.

(i) *Linters.* As far as applicable the regulations in this part shall include linters.

(j) *Warehouse.* Any building, structure, or other protected inclosure in which cotton is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which cotton is or may be stored.

(k) *Warehouseman.* A person lawfully engaged in the business of storing cotton.

(l) *License.* A license issued under the act by the Secretary.

(m) *Licensed warehouseman.* A warehouseman licensed as such under the act.

(n) *Licensed warehouse.* A warehouse for the conduct of which a license has been issued.

(o) *Licensed warehouseman's bond.* A bond required to be given under the act by a licensed warehouseman.

(p) *Licensed classifier.* A person licensed under the act to classify according to grade or otherwise and certificate the grade or other class of cotton.

(q) *Licensed weigher.* A person licensed under the act to weigh and certificate the weight of cotton.

(r) *Cotton examiner.* An officer of the Department of Agriculture designated by the Administrator for the purpose of hearing cotton appeals under §§ 735.75 through 735.85.

(s) *Receipt.* A warehouse receipt.

(t) *Bale.* A bale or other package.

(u) *State.* A State, Territory, or district of the United States.

(v) *Licensed sampler.* A person, employed by a licensed warehouseman, licensed under the act to draw samples from cotton stored in the licensed warehouse at which such person is employed.

(w) *Board of cotton examiners.* A board of cotton examiners properly qualified and designated as such under the regulations (part 28 of this chapter) under the United States Cotton Standards Act.

(x) *Net assets.* The difference remaining when liabilities are subtracted from allowable assets. In determining allowable assets, credit may be given for appraisal of real property less improvements and for the appraisal of insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and tornado. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Secretary shall, at his discretion, determine what assets are allowable and under what conditions appraisals may be used.

(y) *Warehouse capacity.* Warehouse capacity is the maximum number of bales of cotton that the warehouse will accommodate when stored in the manner customary to the warehouse and as required by the Secretary.

(z) *Current assets.* Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(aa) *Current liabilities.* Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(bb) *Access.* The ability when authorized, to read, change, and transfer warehouse receipt information retained in the central filing system.

(cc) *Central filing system (CFS).* An electronic computer system operated and maintained by an approved pro-

vider where the information relating to warehouse receipts is recorded.

(dd) *Electronic warehouse receipt (EWR).* An electronic file in the CFS that contains at the least information required to be included in a warehouse receipt by section 18 of the Act, and §735.16, regarding a bale of cotton and has been identified to a holder.

(ee) *Holder.* An individual or entity in possession, in fact, or by operation of law, of a receipt and by extension, of the cotton represented thereby.

(ff) *Issue.* EWRs are considered issued when a licensed warehouseman has transmitted all necessary information to an approved provider, and when such information is entered into the provider's CFS.

(gg) *Provider.* An individual or entity that maintains EWRs in a CFS, meets the requirements of this part, and has a Provider Agreement with the Service.

(hh) *Provider Agreement.* An agreement entered into between the Secretary and a provider that delineates the provider's responsibilities and defines the relationship between the provider and the Service regarding the provider's maintenance and security of EWRs in the CFS and other requirements of this part.

(ii) *User.* An individual or entity that uses the provider's CFS but shall not include the Service in its regulatory capacity.

[29 FR 15720, Nov. 24, 1964. Redesignated and amended at 50 FR 1814, Jan. 14, 1985; Amdt. 2, 53 FR 27148, July 19, 1988; 59 FR 15038, Mar. 31, 1994; 62 FR 33540, June 20, 1997]

WAREHOUSE LICENSES

§ 735.3 Application forms.

Applications for licenses under sections 4 and 9 of the act and for amendments of licenses under section 5 of the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application.

§ 735.3a All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of cotton by an applicant for a warehouse license must qualify for a license and be licensed under the act if the applicant is to be licensed to operate as a cotton warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Secretary or his designated representative upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of nonfederally licensed facilities, there would be no likelihood of interchange or substitution of cotton stored in such facilities with cotton stored in the federally licensed facilities. If all such facilities do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the act as a cotton warehouseman in the city or town in which the facilities in question are located. Each applicant for a warehouse license must apply for a license covering all facilities operated by him for the storage of cotton within the same city or town or for exemption as provided in this section. If a licensed cotton warehouseman acquires any additional cotton storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No cotton storage facility acquired by a licensed cotton warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of cotton until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed cotton storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of cotton until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of cotton by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other

violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of cotton.

§ 735.4 Grounds for not issuing a license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of cotton; that the warehouseman does not possess a good reputation, or does not have a net worth of at least \$25,000, or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part; or that there is any other sufficient reason within the intent of the act for not issuing such license. If all the facilities operated for the storage of cotton by the applicant within the same city or town are not to be licensed under the act, the applicant shall not be licensed as a cotton warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 735.3a.

[29 FR 15720, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985, and amended at Amdt. 2, 53 FR 27148, July 19, 1988]

§ 735.5 Financial requirements.

(a) Each warehouseman conducting a warehouse licensed under the Act or for which application for a license under the Act has been made must maintain complete, accurate, and current financial records which shall be available to the Secretary for review or audit at the Secretary's request.

(b) Each warehouseman conducting a warehouse for which application for license under the Act is made shall provide with the application and each licensed warehouseman: shall annually, or more frequently if required, furnish to the Secretary, financial statements from the records required in paragraph (a) of this section, prepared according to generally accepted accounting principles. Such statements shall include but not be limited to: (1) Balance sheet, (2) statement of income (profit and

loss), (3) statement of retained earnings, and (4) statement of changes in financial position. The chief executive officer for the warehouseman shall certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouseman as of the date designated and fairly represent the results of operations for the period designated.

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited or reviewed by an independent public accountant. The Secretary may, at his discretion, require an audited financial statement prepared by an independent certified public accountant. He may also, at his discretion, require an on-site examination and an audit by USDA personnel. Audits and reviews by independent certified public accountants and independent public accountants specified in this section must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, must be furnished along with the financial statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse which is licensed under this part, or for which application for such a license has been made, must have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least the amount obtained by multiplying \$10.00 by the warehouse capacity in bales to a maximum of \$250,000 in each State; however, no person may be licensed or remain licensed as a warehouseman under this part unless that person has allowable net assets of at least \$25,000 in each State, (Any deficiency in net assets above the \$25,000 minimum may be supplied by an increase in the amount of

the warehouseman's bond in accordance with §735.12(c) of this part); and

(2) Total current assets equal to or exceeding total current liabilities or evidence acceptable to the Secretary that funds will be and remain available to meet current obligations.

(e) If a warehouseman is licensed or is applying for licenses to operate two or more warehouses under this part, the maximum number of bales which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Secretary, shall be considered in determining whether the warehouseman meets the net asset requirements specified in paragraph (d) of this section.

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock will not be considered a liability;

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouseman to conform with paragraphs (b) and (c) of this section may be allowed if (i) prepared by independent appraisers acceptable to the Secretary and (ii) the assets are fully insured against casualty loss;

(3) Financial statements of a parent company which separately identifies the financial position of the warehouse as a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d) of this section, if the parent company submits a financial statement which qualifies under this section.

(g) If a State agency is licensed or applying for a license as provided in section 9 of the Act has funds of not less than \$500,000 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be

considered sufficient to meet the net asset requirements of this section.

(h) If a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 735.11(b), the certification may only be used to satisfy any deficiencies in assets above \$25,000.

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 735.11(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 735.5(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 735.5(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of § 735.11(c).

[Amdt. 2, 53 FR 27148, July 19, 1988]

§ 735.6 License shall be posted.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post the same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by the warehouseman are delivered to depositors.

§ 735.7 Suspension or revocation of warehouse licenses.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a warehouseman when such warehouseman:

(a) Does not have a net worth of at least \$25,000;

(b) Has parted, in whole or in part, with his control over the licensed warehouse;

(c) Is in process of dissolution or has been dissolved;

(d) Has ceased to conduct such licensed warehouse;

(e) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;

(f) Has made unreasonable or exorbitant charges for services rendered;

(g) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of cotton which is not covered by a license or an exemption as provided in § 735.3a; or

(h) Has in any other manner violated or failed to comply with any provision of the act or the regulations in this part. Whenever any of the conditions mentioned in paragraphs (a) through (h) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or

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his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 735.89.

[29 FR 15720, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985; Amdt. 2, 53 FR 27149, July 19, 1988]

§ 735.8 Return of suspended or revoked warehouse license.

In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 735.6; or in the discretion of the Administrator a new license may be issued.

§ 735.9 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof may be issued under the same number.

§ 735.10 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 735.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other

terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of [the United States Warehouse Act] and regulations thereunder relating to the above-named products.

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act, regulations, and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This bond shall remain in force and effect for a minimum term of one year beginning with the effective date of this bond and thereafter shall be considered as a continuous bond, subject to termination as herein provided.

Regardless of the number of years this bond remains in force, or the number of premiums paid, and regardless of the number or amount of claims or claimants, in no event shall the aggregate liability of the surety under this bond exceed the amount of this bond.

This bond may be terminated at the end of the initial one year term by providing at least 120 days advance written notice of cancellation to the Secretary. This bond may be canceled at any time after the initial one year term beginning with the bond effective date by providing 120 days advance written notice of cancellation to the Secretary. If said notice is given by the surety, a copy of the notice shall be mailed on the same day to the principal. Cancellation of this bond shall not affect any liability that shall have accrued under this bond prior to the effective date of cancellation.

This bond shall be effective on and after

_____.
A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR part 225; or

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors

of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraphs (a) or (c) of this section. Such certificate of participation shall not be subject to §§ 735.12 and 735.13; or

(c) In the form of a deposit with the Secretary as security, United States bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this paragraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR part 225.

[Amdt. 2, 53 FR 27149, July 19, 1988]

§ 735.12 Amount of bond; additional amounts.

(a) The amount of bond to be furnished by each warehouseman under the regulations in this part, shall be the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Secretary, but not less than twenty thousand dollars (\$20,000) nor more than two hundred fifty thousand dollars

(\$250,000); except as provided in paragraphs (b) and (c) of this section.

(b) In case a warehouseman is licensed or applying for licenses to operate two or more warehouses in the same State, he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State and shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the twenty-five thousand dollars (\$25,000) minimum required by § 735.5(d)(1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period of not less than two years to coincide with the period of any deposit of obligations under 7 CFR 735.11(c). Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation.

(d) If the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

[Amdt. 2, 53 FR 27150, July 19, 1988]

§ 735.13 Amendment to license.

In case an application is made under § 735.3 for an amendment to a license and no bond previously filed by the warehouseman covers obligations arising under such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within the time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by

the warehouseman and otherwise complying with the act and the regulations in this part may be filed in lieu of a new bond.

§ 735.14 Bond required each year.

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 735.11. Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide for or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

[Amdt. 2, 53 FR 27150, July 19, 1988]

§ 735.15 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or his designated representative.

WAREHOUSE RECEIPTS

§ 735.16 Form.

(a) Every receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following:

(1) The name of the licensed warehouseman and the designation, if any, of the warehouse;

(2) The license number of the warehouse;

(3) A statement whether the warehouseman is incorporated or unincorporated, and, if incorporated, under what laws;

(4) In the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship;

(5) The tag number given to each bale of cotton in accordance with § 735.31;

(6) A statement conspicuously placed, whether or not the cotton is insured,

and if insured, to what extent, by the warehouseman, against loss or damage by fire, lightning and other risks;

(7) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon;

(8) A blank space designated for the purpose in which the grade and/or other classification may be stated; and

(9) A statement to the effect that the weight was determined by a weigher licensed under the U.S. Warehouse Act, except that if the weight is not so determined, as permitted in § 735.38, the receipt shall contain a statement to that effect.

(b) Except as to warehouse receipts issued on or before August 30, 1944, or when an expiration date authorized by the Department is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton, and every nonnegotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton: *Provided*, That nothing contained in this section shall prohibit a warehouseman from legally selling the cotton when his accrued storage and other charges approach the current market value of the cotton.

(c) In addition to complying with paragraphs (a) and (b) of this section, every negotiable receipt issued for cotton stored in a licensed warehouse shall embody within its written or printed terms a statement that the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners when such cotton is so classified.

(d) Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class shall be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn in accordance with § 735.71, and shall be stated in the receipt in accordance with §§ 735.68 through 735.74.

(e) If a warehouseman issue a receipt omitting the statement of grade on request of the depositor, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "Not graded on request of depositor."

(f) Licensed receipts issued to cover lintens shall be clearly and conspicuously marked "Linters".

(g) If a warehouseman issue a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made by the warehouseman.

(h) A warehouse receipt may contain additional information; Provided that such information does not interfere with the information required by this part.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15720, Nov. 24, 1964, as amended at 33 FR 14699, Oct. 2, 1968; 37 FR 12920, June 30, 1972; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985; 59 FR 15038, Mar. 31, 1994]

§ 735.17 Copies of receipts.

(a) At least one actual, skeleton, or microfilm copy of all receipts shall be made, and all copies, except skeleton and microfilm copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable."

(b) A copy of each receipt issued shall be retained by the warehouseman for a period of 1 year after December 31 of the year in which the corresponding original receipt is canceled.

(c) If copies are retained on microfilm, the warehouseman shall:

(1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm record; and

(3) Be ready at all times to provide, and immediately provide, at the expense of the warehouseman, any facsimile enlargement of such microfilm

copies which any authorized officers or agents of the Department of Agriculture may request.

(Approved by the Office of Management and Budget under control number 0560-0120)

[37 FR 12920, June 30, 1972, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.18 Lost or destroyed receipts; bond.

(a) In the case of a lost or destroyed receipt, a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman (1) an affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the cotton represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have as surety thereon preferably a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 735.19 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is (a) in

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a form prescribed by the Administrator, (b) upon distinctive paper or card stock specified by the Administrator, (c) printed by a printer with whom the United States has a subsisting contract and bond for such printing, and (d) on paper manufactured by and procured from a manufacturer with whom the United States has a subsisting contract and bond for the manufacture of such paper, or on card stock distinctively tinted with fugitive ink by the printer in the manner prescribed by the contract under paragraph (c) of this section.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.20 Partial delivery of cotton.

If a warehouseman delivers a part only of a lot of cotton for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the cotton.

§ 735.21 Return of receipts before delivery of cotton.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver cotton for which he has issued a negotiable receipt under the act until such receipt has been returned to him and canceled; and shall not deliver cotton for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery or his authorized agent a written delivery order, properly signed, specifying by bale or tag number each bale to be delivered from any receipt or receipts. Before delivering, or upon delivery of, all the cotton covered by a nonnegotiable warehouse receipt, the warehouseman may require the surrender of the receipt. The location where receipts are to be surrendered shall be a location within reasonable proximity of the warehouse where the cotton is stored or other location that would not

interfere with enforcement of the Act and regulations.

[37 FR 12920, June 30, 1972. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.22 Omission of grade; no compulsion by warehouseman.

No licensed warehouseman shall, directly or indirectly by any means whatever, compel or attempt to compel the depositor of any cotton in his warehouse to request the issuance of a receipt omitting the statement of grade.

DUTIES OF LICENSED WAREHOUSEMAN

§ 735.23 Insurance; requirements.

(a) When requested in writing by the depositor of cotton in a licensed warehouse, or by the holder of the receipt covering such cotton, to insure such cotton against loss or damage by fire, lightning, and other risks, each licensed warehouseman shall secure in his own name such insurance under reporting forms of policies which automatically attach for the full value of such cotton, including daily changes of value through market fluctuations and changes in the quantity of such product from day to day, as soon as such cotton is placed in his legal custody, and he shall continue such insurance in effect so long as the cotton remains in his legal custody. Such insurance shall be covered by lawful policies issued by one or more insurance companies. Each warehouseman insuring cotton under the provisions of this section shall submit such reports to underwriters as may be required under the terms of such policies, and copies of such reports shall be submitted to the Department as it may require. If the warehouseman is unable to procure insurance to the extent requested, he shall, orally or by telegraph or by telephone, and at his own expense, immediately notify the person making the request of such fact. When insurance is not carried in the warehouseman's name, the receipt shall show that the cotton is not insured by the warehouseman. Nothing in this section shall be construed to prevent a licensed warehouseman from adopting a rule that he will insure all cotton stored in his warehouse, but if he elects to insure he

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shall accomplish such insurance through policies as above specified.

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by §735.6, and at such other place as the Administrator or his representative may from time to time designate, a notice, stating briefly the conditions under which the cotton will be insured against loss or damage by fire, lightning, and other risks.

§ 735.24 Premiums; inspections; reports.

Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 735.25 Warehouseman to collect and pay over insurance.

Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay over to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 735.26 Care of cotton in licensed warehouse.

Each warehouseman shall at all times exercise such care in regard to cotton in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 735.27 Care of other cotton and other commodities.

If, at any time, a warehouseman shall handle or store cotton otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the cotton in his custody as a licensed warehouseman or impair his ability to meet his obligations and perform his

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duties under the act and the regulations in this part. Nonlicensed cotton shall be kept separate from licensed cotton.

§ 735.28 Records to be kept in safe place.

(a) Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of receipts issued, and canceled receipts or microfilm copies of canceled receipts except that with the written consent of the Administrator or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment he may keep such records, books, and papers in some other place of safety, approved by the Administrator or his representative.

(b) Each canceled receipt or microfilm copy of each canceled receipt shall be retained by the warehouseman for a period of 6 years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(c) Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(d) If microfilm copies of canceled receipts are to be retained in lieu of canceled receipts, the warehouseman shall:

(1) Have available at all times facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange, index, and file the films in such a manner as to permit the immediate location of any particular microfilm copy; and,

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(3) Be ready at all times to provide, and immediately provide, at the expense of the warehouseman, any facsimile enlargement of such microfilm copies which any authorized officers or agents of the Department of Agriculture may request.

(Approved by the Office of Management and Budget under control number 0560-0120)

[37 FR 12920, June 30, 1972, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.29 Warehouse charges.

A licensed warehouseman shall not make any unreasonable, exorbitant, or discriminatory charge for services rendered. Before a license to conduct a warehouse is granted under the act, the warehouseman shall file with the Department a copy of his rules, if any, and a schedule of the charges to be made by him if licensed. Effective at the beginning of any cotton season, a licensed warehouseman may change his rate of charges for storage and other services, and the new rates may apply to all cotton then in storage as well as cotton received thereafter. At or before the beginning of each season every licensed warehouseman shall file with the Department a copy of his rules, if any, and of his schedule of charges for the ensuing season. Should a licensed warehouseman wish to make changes in his rates to become effective at any time other than at the beginning of a season, he shall file with the Department an amended schedule showing the contemplated changes, accompanied by a statement setting forth the reasons therefor. No increase in the storage rate shown in such an amended schedule shall apply to cotton in storage at the time the changes become effective. A licensed warehouseman may demand payment of all accrued charges at the close of each cotton season. If, upon demand, the owner of the cotton refuses to pay such charges at the end of a season, the warehouseman may take such action to enforce collection of his charges as is permitted by the laws of the State in which the warehouse is located. Each licensed warehouseman shall keep a copy of his current rules and schedule of charges exposed conspicuously in the place prescribed by § 735.6 and at such other place acces-

sible to the public as the Secretary or his designated representative may from time to time designate. For the purposes of this section the cotton season shall commence, with respect to each warehouse, at such time not later than September 1 of each year, as the operator of the warehouse shall select, and he shall notify the Department in writing not less than five days next preceding the date selected.

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 35751, Aug. 17, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.30 Business hours.

(a) Each licensed warehouse shall be kept open for the purpose of receiving cotton for storage and delivering cotton out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his warehouse a notice showing the hours during which the warehouse will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, who shall be authorized to deliver cotton stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 735.31 Numbered tags to be attached to bales.

Each warehouseman shall, upon acceptance of any bale of cotton for storage, immediately attach thereto a numbered tag of good quality which shall identify the bale. Such tag either shall be made of reasonably heavy waterproof paper or linen, with reinforced eyelet or eyelets, and be attached to the bale with a flexible, rustproof wire, or shall be made of such other material and attached by such other means as shall be approved by the Administrator

or his representative. The tags shall be attached in numerical sequence or any series of sequence clearly distinguishable from each other.

§ 735.32 Arrangement of stored cotton.

(a) Each warehouseman shall store each bale of cotton for which a receipt under the act has been issued so that the tag thereon, required by § 735.31 is visible and readily accessible, except as provided in paragraph (b) of this section, and shall arrange all other cotton in his licensed warehouse so as to permit an accurate check thereof.

(b) If any licensed warehouseman is tendered for storage cotton of same grade and staple and in such quantity by any one depositor that efficiency of operation dictates that such cotton should be stored in lots without reference to visibility of all tags on all bales within any lot, the warehouseman may store such cotton of same grade and staple belonging to the same depositor in lots of not less than 25 bales nor more than 200 bales: *Provided, however,* That each bale entering into the lot must bear an individual identification tag, and each lot must be so stored that the number of bales within the lot may be accurately determined.

(c) An identification card or tag shall be attached by the warehouseman to each lot of cotton which shall show the lot number and the number of bales in the lot. The warehouseman shall also maintain an office record showing bale or tag number of each bale in the lot and the location of the lot in the warehouse. Each lot shall be so arranged as to be readily distinguishable from each and every other lot. When requested by a proper representative of the Department of Agriculture engaged in making an examination of the warehouse, the warehouseman shall tear or break down at his own expense such stacks or lots of cotton as the examiner deems necessary to a proper examination. Before any warehouseman undertakes to store in accordance with this section he shall submit a statement setting forth: (1) His reasons for desiring to avail himself of this section and (2) the plan of storage he proposes to follow, and he shall secure prior permission from the Secretary or his designated

representative to practice such method of storage.

§ 735.33 System of accounts.

Each warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Service, which shall show for each bale of cotton the tag number mentioned in § 735.31, its weight, its class when its class is required to be, or is, ascertained, its location, the dates received for, and delivered out of, storage, and the receipts issued and canceled, and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.34 Reports.

Each licensed warehouseman shall, from time to time, when requested by the Administrator, or his representative, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse as the Administrator may require.

§ 735.35 Canceled receipts; auditing.

Each warehouseman, if requested by the Service, shall forward canceled receipts for auditing to an entity or office of the Service as may be designated from time to time.

[62 FR 33540, June 20, 1997]

§ 735.36 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report

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submitted by such warehouseman under the regulations in this part.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.37 Inspections and examinations of warehouses.

Each licensed warehouseman shall permit any officer or agent of the Department, authorized by the Secretary for the purpose, to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof, and such warehouseman shall furnish such officer or agent, when he so requests, the assistance necessary to enable him to make any inspection or examination under this section.

§ 735.38 Weighing of cotton; weighing apparatus.

(a) All cotton before being stored in a licensed warehouse, shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt; except that by agreement with the depositor, point of origin weights may be stated on the receipt for cotton tendered for storage in a lot the identity of which is to be preserved during storage and shipment from the warehouse, and for which a multiple bale receipt is to be issued: *Provided*, That if such lot is broken at the warehouse, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

(b) Each licensed warehouse shall be equipped with scales acceptable to the Department for weighing cotton into and out of the warehouse. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by an officer or agent of the Department designated by the Administrator for the purpose. If the Department shall disapprove such weighing apparatus, it shall not thereafter,

unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the act and the regulations in this part.

[33 FR 14699, Oct. 2, 1968. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.39 Loose cotton.

Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.

§ 735.40 Excess storage.

(a) If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof as determined in accordance with 7 CFR 735.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper operation of the sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Secretary of such excess storage, the reason therefor and the location thereof.

(b) A warehouseman who lacks space and desires to transfer at his own expense, identity preserved depositor stored cotton, for which receipts have been issued to another licensed warehouse may physically do so subject to the following terms and conditions:

(1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward cotton deposited on an identity preserved bases with the written permission of the depositor under such terms and conditions as the Secretary may prescribe;

(2) For purposes of this section, a licensed warehouse means; (i) a warehouse operated by a warehouseman who holds an unsuspended, unrevoked license under the U.S. Warehouse Act for cotton; or (ii) a warehouse operated by a warehouseman who holds an effective warehouse license for the public storage of cotton issued by a State that has financial, bonding and examination requirements for the benefit of all depositors at least equal to the requirements of this section;

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number

and weight, in blocks not to exceed 200 bales. The receiving warehouse shall promptly issue a non-negotiable block receipt for each block attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each block intact, attach a header card showing the receipt number, number of bales and a copy of the Bill of Lading with the individual tag numbers. Such non-negotiable block receipts shall have printed or stamped in large bold outline letters diagonally across the face the words "NOT NEGOTIABLE." Receipts are not valid for collateral purposes. The non-negotiable receipt shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The cotton covered by such receipts is not the property of either the receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose bailed cotton was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto);

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton (The bond amount need not be more than \$250,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman must not incur storage obligations that exceed the licensed capacity of the receiving warehouse);

(5) The shipping warehouseman continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (b)(6) of this section, required to redeliver the cotton, upon demand, to the depositor or the depositor's transferee at the warehouse where the cotton was first deposited for storage;

(6) The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first

deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouseman and the receiving warehouseman, elects to take delivery at the warehouse to which cotton was transferred under this section;

(7) Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

(8) Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this section shall be subject to the requirements for warehouse receipts specified elsewhere in these regulations; and

(9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, he must in accordance with 7 CFR 735.23 keep such cotton insured in his own name or transfer the cotton only to a warehouse where the cotton is fully insured.

[Amdt. 2, 53 FR 27150, July 19, 1988]

§ 735.41 Removal of cotton from storage.

Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

§ 735.42 Storage of wet and fire-damaged cotton.

A warehouseman shall not place any bale of cotton that is excessively wet

in contact with any other cotton in the licensed warehouse. A warehouseman shall not store in the same compartment with cotton that has not been damaged by fire any cotton that has been damaged by fire until the risk of fire therein has passed and the fire-damaged cotton has been removed from the bale, and then he shall not store it in contact with cotton that has not been so damaged.

§ 735.43 Cotton handling; storage; injuries.

A warehouseman shall not handle or store cotton in such manner as will injure or damage it, or in any part of the warehouse in which it is likely to be injured or damaged by excessive moisture, or otherwise.

§ 735.44 Fire loss to be reported by wire.

If at any time a fire shall occur at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately by wire to the Administrator the occurrence of such fire and the extent of damage.

§ 735.45 Signatures on receipts to be filed with Department.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign, and shall file signatures of such persons.

§ 735.46 [Reserved]

§ 735.47 Certificates to be filed with warehouseman.

When a grade or weight certificate has been issued by a licensed grader or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the cotton covered by such certificate is stored, and such certificates shall become a part of the records of the licensed warehouseman. The licensed warehouseman shall also keep a copy of each Form A memorandum and Form C certificate issued by a board of cotton examiners which forms a basis of any receipt issued by the

warehouseman. All certificates and memoranda within this section shall be retained in the records of the licensed warehouseman for a period of one year after December 31 of the year in which the receipt based on such certificates or memoranda is canceled.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.48 Drawing of samples.

Each warehouseman shall have in his employ at all times one or more licensed samplers whose duty it shall be to draw samples from any cotton stored or to be stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn. When directed by the Administrator such requests shall be in writing. Such samplers shall perform their duties under the supervision and at the direction of the licensed warehouseman and the samples shall be drawn in accordance with § 735.72.

§ 735.49 Samples; drawing and marking; how.

All samples drawn from cotton in the custody of a licensed warehouseman for storage in a licensed warehouse shall be drawn by licensed samplers in the employ of the licensed warehouseman and at his direction and under his supervision, except when they are drawn as provided in § 735.79 or are drawn by or under the direction of a cotton exchange inspection agency in accordance with the regulations in part 27 of this chapter under the cotton futures legislation (26 U.S.C. 4851 et seq.) or are drawn under the supervision of a Cotton Division employee in accordance with the regulations in part 28 of this chapter under the United States Cotton Standards Act (7 U.S.C. 51 et seq.). Each sample shall be appropriately marked to show the tag number of the bale of cotton from which it was drawn and the date of sampling. A record of the sampling, including the written request, if any, of the owner of the cotton or the person having a legal right to have such cotton sampled, shall be kept by the licensed warehouseman as

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a part of the warehouse records, for a period of one year after December 31 of the year in which such cotton is removed from the warehouse.

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[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

CROSS REFERENCE: For regulations under the Cotton Futures Act and the Cotton Standards Act, see 7 CFR parts 27 and 28 of this chapter.

FEES

§ 735.50 License fees.

(a) Fees are collected in advance for each original, amended, modified, extended, reinstated, or duplicate warehouseman's license; and for each original, duplicate, or modified license issued to inspect, sample, grade, classify, or weigh commodities.

(b) Fee changes, if applicable, will be announced by Notice in the FEDERAL REGISTER on or before July 1, and effective the following October 1.

[59 FR 51358, Oct. 11, 1994]

§ 735.51 Warehouse annual and inspection fees.

Warehousemen must pay:

(a) An annual fee which will be determined by computing the capacity for each warehouse location under a single license and adding those amounts together to determine the total due. The fee will be assessed and payable when the warehouse bond is furnished in accordance with these regulations, for acceptance by the Secretary and annually thereafter on the bond renewal date. The capacity for each identifiable location will be determined by the Secretary. The total capacity of all locations may not exceed the capacity stated in the current license. An identifiable location is a fully functional public warehouse as determined by the Secretary. The annual fee a licensed warehouseman is assessed may be adjusted by the amount Commodity Credit Corporation (CCC) pays, if CCC has a storage contract or agreement with the warehouseman.

(b) An inspection fee for each original and amendment inspection.

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(c) An inspection fee at the rate of 100 percent of the annual fee charged warehouses without a CCC storage contract or agreement, in all cases where the license has been suspended and the warehouseman has requested reinstatement. No fee will be charged if the Secretary determines that the suspension was not justified.

(d) A fee for each inspection requested by the warehouseman at the rate of 100 percent of the annual fee charged warehouses without a CCC storage contract or agreement.

[59 FR 51358, Oct. 11, 1994]

§ 735.52 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, pursuant to the regulation in this part, the applicant or licensee shall deposit with the service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of the Service.

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985, as amended at 62 FR 33540, June 20, 1997]

§ 735.53 Return of excess deposit.

The Service shall hold in its custody each advance deposit made under § 735.52 until the fee, if any, is assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

[49 FR 3640, Jan. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985]

LICENSED CLASSIFIERS AND LICENSED WEIGHERS

§ 735.54 Sampler's, classifier's, and weigher's applications.

(a) Applications for licenses to sample, classify and/or weigh cotton under section 11 of the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be in English, shall be signed by the applicant, shall be verified by him, under

oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by—

(1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made, under the act, in which cotton sought to be sampled, classified and/or weighed under such license is or may be stored;

(2) A statement from the warehouseman conducting such warehouse showing whether or not the applicant is competent and is acceptable to such warehouseman for the purpose;

(3) Satisfactory evidence that he is competent to sample, classify and/or weigh cotton;

(4) A statement by the applicant that he agrees to comply with and abide by the terms of the act and the regulations in this part so far as the same may relate to him; and

(5) Such other information as the Administrator may deem necessary:

Provided, That when an application for a license to classify cotton is filed by a person who does not intend to classify cotton for any particular licensed warehouseman but who does intend to classify cotton stored or to be stored in a licensed warehouse and to issue class certificates therefor, as provided for by the act and the regulations in this part, independent of the warehouse receipts issued to cover such cotton, it shall not be necessary to furnish such statement as is required in this paragraph.

(c) For the purpose of classifying cotton under the regulations in this part, each licensed classifier who holds an unsuspended or unrevoked license under the Cotton Standards Act of March 4, 1923, and regulations thereunder to classify cotton and certificate the grade thereof shall be deemed competent and a license may be issued to him under the United States Warehouse Act upon furnishing the information required by paragraph (b) of this section except as specified in paragraph (c)(3) of this section.

(d) The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

(e) A single application may be made by any person for a license as a sampler, classifier and weigher upon complying with all the requirements of this section.

§ 735.55 Examination of applicant.

Each applicant for a license as a sampler, classifier and/or weigher and each licensed sampler, classifier and/or weigher shall, whenever requested by an authorized agent of the Department designated by the Administrator, for the purpose, submit to an examination or test to show his ability to properly sample, classify or weigh cotton, as the case may be, and shall also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used by him.

§ 735.56 Posting of license.

Each licensed classifier shall keep his license conspicuously posted in the office where all or most of the classifying is done, and each licensed sampler and/or weigher shall keep his license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Service.

§ 735.57 Duties of sampler, classifier and weigher.

Each licensed classifier or weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in a licensed warehouse to which his license applies, if such cotton is offered to him under such conditions as permit the proper performance of such functions; except that no class or weight certificate need be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination thereof. Each licensed sampler shall sample cotton stored or to be stored in a licensed warehouse for which he holds a license, in accordance with § 735.48. Each licensed sampler, classifier, and weigher shall give preference to persons who request his services as

such over persons who request his services in any other capacity. No class or weight certificate shall be issued under the act for cotton not in the custody of a licensed warehouseman for purposes of storage in a licensed warehouse, nor shall cotton not in the custody of such a warehouseman for such purpose be sampled by a licensed sampler acting as such.

§ 735.58 Class certificates; form.

(a) Each class certificate issued under the act by a licensed classifier shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms:

- (1) The caption "Cotton class certificate";
- (2) Whether it is an original, a duplicate, or other copy;
- (3) The name and location of the licensed warehouse in which the cotton is or is to be stored;
- (4) The date of the certificate;
- (5) The location of the cotton at the time of classification;
- (6) The identification of each bale of cotton by the tag number given to the bale in accordance with § 735.31 or if there be no such tag number by other marks or numbers;
- (7) The grade or other class, except length of staple, of each bale of cotton covered by the certificate, in accordance with §§ 735.68 through 735.73, as far as applicable, and the standard or description in accordance with which the classification is made;
- (8) A blank space designated for the purpose in which the length of staple may be stated;
- (9) That the certificate is issued by a licensed classifier under the United States Warehouse Act and regulations thereunder; and
- (10) The signature of the licensed classifier.

In addition, the class certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

(b) Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classers under the United States Cotton Standards Act (7

U.S.C. 51 et seq.) shall be deemed sufficient for the purposes of the United States Warehouse Act and the regulations in this part, if the samples on which they are based were drawn in accordance with applicable requirements of § 735.71, and, in case of a class certificate issued by such a licensed classer, if the classer holds an unsuspended and unrevoked license under each of said acts.

§ 735.59 Weight certificates; form.

Each weight certificate issued under the act by a licensed weigher shall be in a form approved for the purpose by the Administrator, and shall embody within its written or printed terms:

- (a) The caption "Cotton weight certificate";
- (b) Whether it is an original, a duplicate, or other copy;
- (c) The name and location of the licensed warehouse in which the cotton is or is to be stored;
- (d) The date of the certificate;
- (e) The location of the cotton at the time of weighing;
- (f) The identification of each bale of cotton by the tag number given to the bale in accordance with § 735.31 or if there be no such tag number by other marks or numbers;
- (g) The gross, or net and tare, weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition;
- (h) That the certificate is issued by a licensed weigher under the United States Warehouse Act and the regulations thereunder; and
- (i) The signature of such licensed weigher.

In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

[29 FR 15720, Nov. 24, 1964, as amended at 37 FR 12920, June 30, 1972. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.60 Combined class and weight certificates.

The class and weight of any cotton, ascertained by a licensed classifier and a licensed weigher, may be stated on a certificate meeting the combined requirements of §§ 735.58 and 735.59 if the form of such certificate shall have been approved for the purpose by the Administrator.

§ 735.61 Copies of certificates to be kept.

Each licensed classifier and each licensed weigher shall keep for a period of one year in a place accessible to interested persons a copy of each certificate issued by him under the regulations in this part and shall file a copy of each such certificate with the warehouse in which the cotton covered by the certificate is stored.

§ 735.62 Licensees to permit and assist in inspection.

Each licensed sampler, classifier, and/or weigher shall permit any officer or agent of the Department authorized by the Secretary for the purpose, to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, with the consent of the licensed warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 735.37 as far as any such inspection or examination relates to the performance of the duties of such licensed sampler, classifier, and/or weigher under the act and this part.

§ 735.63 Reports.

Each licensed sampler, classifier, and/or weigher shall, from time to time, when requested by the Administrator, make reports, on forms furnished for the purpose by the Service, bearing upon his activities as such licensed sampler, classifier, and/or weigher.

§ 735.64 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend

the license of a sampler, classifier and/or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor, submitted by a licensed sampler, classifier, and/or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such licensed sampler, classifier, and/or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a licensed sampler, classifier, and/or weigher when such licensed sampler, classifier, and/or weigher (a) has ceased to perform services as such sampler, classifier, and/or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such licensed sampler, classifier, and/or weigher. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions mentioned under (a) or (b) of this section exist, it shall be the duty of such warehouseman to notify, in writing, the Administrator. Before the license of any licensed sampler, classifier, and/or weigher is permanently suspended or revoked pursuant to section 12 of the act, such licensed sampler, classifier, and/or weigher shall be furnished by the Secretary or by his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 735.89.

§ 735.65 Suspended or revoked licenses; return; termination of license.

(a) In case a license issued to a sampler, classifier, and/or weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, and it shall be returned to the licensed sampler, classifier, and/or weigher to

whom it was originally issued, and it shall be posted as prescribed in § 735.56.

(b) Any license issued, under the act and the regulations in this part, to a sampler, classifier, and/or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked or canceled. Thereupon the license of such sampler, classifier, and/or weigher shall be returned to the Secretary. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to him a new license, omitting the names of the warehouses covering which licenses have been revoked. Such new license shall be posted as prescribed in § 735.56.

§ 735.66 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to a licensed sampler, classifier, and/or weigher, a duplicate thereof may be issued under the same number.

§ 735.67 Unlicensed classifiers and weighers.

No person shall in any way represent himself to be a sampler, classifier, and/or weigher licensed under the act unless he holds an unsuspended and unrevoked license issued under the act.

COTTON CLASSIFICATION

§ 735.68 Statement of class.

Whenever the grade or other class of cotton is required to be, or is, stated for the purpose of the act or the regulations in this part it shall be stated in accordance with §§ 735.68 through 735.73 as far as applicable.

§ 735.69 Official cotton standards of the United States.

The official cotton standards of the United States, established and promulgated under the United States Cotton Standards Act of March 4, 1923 (42 Stat. 1517; 7 U.S.C. 51-56), within their scope, are hereby adopted as the official cotton standards for the purposes of the act and the regulations in this part.

§ 735.70 Defective cotton; designation; terms defined.

(a) Cotton that,

(1) Because of the presence of extraneous matter of any character or irregularities or defects, is reduced in value below that of Good Ordinary,

(2) Is below the grade of Good Ordinary,

(3) Is below the grade of Low Middling, if tinged,

(4) Is below the grade of Middling, if stained,

(5) Is linters,

(6) Is less than seven-eighths of an inch in length of staple,

(7) Is of perished staple,

(8) Is of immature staple,

(9) Is gin cut,

(10) Is reginned,

(11) Is repacked,

(12) Is false packed,

(13) Is mixed packed, or

(14) Is water packed, shall be designated as such.

In the case of paragraph (a)(1) of this section the particular extraneous matter or irregularities or defects shall be stated.

(b) If cotton be reduced in value, by reason of the presence of extraneous matter of any character or irregularities or defects, below its grade or below its apparent length of staple according to the official cotton standards of the United States, the grade or length of staple from which it is so reduced, and the grade or length of staple to which it is so reduced, and the quality or condition which so reduces its value shall be determined and stated.

(c) For the purposes of this section, the following terms shall be construed, respectively, to mean:

(1) *Cotton of perished staple.* Cotton that has had the strength of fiber as ordinarily found in cotton destroyed or unduly reduced through exposure to the weather either before picking or after baling, or through heating by fire, or on account of water packing, or by other causes.

(2) *Cotton of immature staple.* Cotton that has been picked and baled before the fiber has reached a normal state of maturity, resulting in a weakened staple of inferior value.

(3) *Gin-cut cotton.* Cotton that shows damage in ginning through cutting by the saws, to an extent that reduces its value more than two grades.

(4) *Reginned cotton.* Cotton that has passed through the ginning process more than once and cotton that, after

having been ginned, has been subjected to a cleaning process and then baled.

(5) *Repacked cotton.* Cotton that is composed of factors', brokers', or other samples, or of loose or miscellaneous lots collected and rebaled, or cotton in a bale which is composed of cotton from two or more smaller bales or parts of bales.

(6) *False packed cotton.* Cotton in a bale (i) containing substances entirely foreign to cotton, (ii) containing damaged cotton in the interior with or without any indication of such damage upon the exterior, (iii) composed of good cotton upon the exterior and decidedly inferior cotton in the interior in such manner as not to be detected by customary examination—that is, a plated bale, or (iv) containing pickings or linters worked into the bale.

(7) *Mixed packed cotton.* Cotton in a bale which, in the samples drawn therefrom, shows (i) a difference of three or more grades, or (ii) a difference of three or more color gradations, or (iii) a difference of two or more grades and two or more color gradations, or (iv) a difference in length of staple of one-eighth inch or more.

(8) *Water packed cotton.* Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior.

§ 735.71 Class based on inspection and sample.

Whenever the grade or other class of cotton is required to be, or is, stated by a warehouseman or a classifier or board of cotton examiners for the purposes of the act or the regulations in this part, it shall be based upon a careful inspection of and a sample properly drawn from the cotton. Samples submitted to a board of cotton examiners for issuance of Form A memorandums and samples from which classification is to be determined by licensed classifiers for purposes of the Act and the regulations in this part shall be drawn by samplers licensed under the Act and said regulations and in accordance with § 735.72.

§ 735.72 Samples.

Each sample shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn. Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet these requirements may be rejected.

§ 735.73 Lower grade (of two samples) to determine classification.

If a sample drawn from one portion of a bale is lower in grade or shorter in length than one drawn from another portion of such bale, the classification of the bale shall be that of the sample showing the lower grade or shorter length.

§ 735.74 Access to official cotton standards.

Each licensed warehouseman and each licensed classifier shall keep himself provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such parts thereof as the Administrator may deem necessary for use in the locality in which the licensed warehouse is located.

COTTON APPEALS

§ 735.75 Who may appeal.

Whenever the grade or other class of cotton, for which official cotton standards of the United States are in effect, is stated on a receipt or a cotton class certificate issued under the act and the regulations in this part, and a question arises as to the true grade or other class of such cotton, any person having an interest in the cotton may take an appeal for the determination of such question.

§ 735.76 Complaint.

In order to take such an appeal a complaint in writing in accordance with § 735.77 shall be filed with a duly authorized cotton examiner or a board

of cotton examiners, or with the Administrator, who shall designate a cotton examiner or a board of cotton examiners for the purpose of disposing of such complaint.

§ 735.77 Contents of complaint.

Such complaint shall be in English and shall state:

(a) The name and post office address of the complainant and the nature of his interest in the cotton,

(b) The name and post office address of the holder of the receipt, if he be not the complainant, and of any other interested party,

(c) The name and location of the licensed warehouse in which the cotton is stored, and the tag number assigned to each bale of cotton involved in the appeal in accordance with § 735.31, the grade or other class assigned to such cotton by the licensed warehouseman, and the date of the receipt issued therefor,

(d) The grade or other class assigned by the licensed classifier, if any,

(e) The grade or other class, different from that assigned by the licensed warehouseman, which is contended for by any interested party,

(f) Whether, within complainant's knowledge, any appeal involving the same cotton previously has been taken, and if so, an appropriate identification of such other appeal,

(g) If samples have been agreed upon and are submitted in accordance with § 735.79(b), a statement thereof.

The complainant shall file with his complaint, when practicable, or before the issuance of the cotton appeal certificate, in the appeal, the warehouse receipt or class certificate, if any, covering the cotton involved in the appeal. When such receipt or certificate is not filed a definite statement indicating why such papers are not produced shall be filed.

§ 735.78 Proof of agent's authority.

In case a complaint is filed under §§ 735.75 through 735.77 by a person purporting to act in behalf of another person, the Administrator, or the cotton examiner or the board of cotton examiners with whom it was filed, may, if considered necessary, require proof of

the authority of such person to file the complaint.

§ 735.79 Determination of appeals; samples.

(a) Appeals taken hereunder shall be determined upon the basis of samples of the cotton involved which have been drawn and submitted in accordance with this section.

(b) The complainant may submit samples of the cotton involved which have been agreed upon by the licensed warehouseman in whose warehouse the cotton is stored and the interested parties other than such warehouseman, or have been drawn by a disinterested person selected for the purpose by the warehouseman and such parties. Such samples shall be drawn in accordance with § 735.72.

(c) If samples which have been submitted pursuant to paragraph (b) of this section be deemed unsatisfactory, the cotton examiner or board of cotton examiners by whom the appeal is heard or the Administrator may require the submission of new samples in accordance with paragraph (b) of this section.

(d) In case samples are not submitted in accordance with paragraph (b) or (c) of this section, the Administrator, the cotton examiner, or board of cotton examiners by whom the appeal is heard may dismiss the appeal as provided in § 735.80, or samples may be drawn from the cotton involved by a cotton examiner or by a disinterested person designated for the purpose by the cotton examiner or the board of cotton examiners by whom the appeal is heard or by the Administrator, and the complainant shall cause the cotton to be made accessible for the purpose of drawing such samples.

§ 735.80 Dismissal of appeals.

The Administrator or the cotton examiner or board of cotton examiners by whom an appeal is heard may dismiss such appeal upon request of the complainant, or for noncompliance with the regulations in this part, or if it be found that the appeal was not taken in good faith. In case of an appeal filed in the first instance with a cotton examiner, a dismissal upon request of the complainant shall be made only before

notice of grade or other class as provided in § 735.81 is issued.

§ 735.81 Cotton appeal certificate.

When an appeal filed with a board of cotton examiners has been determined, it shall immediately issue a cotton appeal certificate. When an appeal has been determined by a cotton examiner he shall issue a notice, a copy of which shall be sent by him to all parties shown by the record of the appeal to have an interest therein. In such notice the grade or other class assigned by him to the cotton involved in the appeal shall be stated, and any such interested party shall have a reasonable time, fixed in such notice, within which he may request of the Administrator a review of the appeal by a board of cotton examiners. In case such request is not filed with such cotton examiner in the time fixed therefor, or in case within such time every such interested party waives in writing a review by a board of cotton examiners, the cotton examiner shall immediately issue a cotton appeal certificate showing the grade or other class assigned to the cotton by him. In case a request under this section for a review of an appeal is filed within the time fixed for the filing of such request, the cotton examiner shall note in his records the time of such filing and shall immediately notify the Administrator, who shall cause the appeal to be reviewed and a cotton appeal certificate issued showing the grade or other class assigned upon such review. Immediately upon the issuance of a cotton appeal certificate under this section, the original thereof, together with any receipt covering such cotton filed in the appeal, shall be sent to the licensed warehouseman concerned, and a copy shall be sent to each other person shown by the record of the appeal to be interested therein.

§ 735.82 Expenses paid by complainant.

All expenses for the transmission of communications from the complainant, for telegraph and telephone toll charges on messages addressed to him, and for drawing and submitting samples required by § 735.79, including such traveling expenses, if any, incurred in

accordance with the fiscal regulations of the Department as the Administrator may deem proper, shall be borne by the complainant in the appeal in connection with which such expenses were incurred.

§ 735.83 Advance deposit by complainant.

If required by the cotton examiner or board of cotton examiners by whom the appeal is heard, the complainant shall make an advance deposit to cover the expenses payable by him under § 735.82. Such deposit shall be in an amount fixed by the cotton examiner or board of cotton examiners, and shall be in the form of a check, certified if required by the Administrator or a post office or express money order, payable to the order of "Treasurer of the United States." As soon as possible after the determination of an appeal in connection with which any such advance deposit shall have been made, the Administrator shall furnish the Treasurer of the United States with a statement of the expenses, if any, chargeable against such advance deposit. Thereupon the Treasurer of the United States shall return to the person making the advance deposit as much thereof as shall not be required for the payment of such expenses.

§ 735.84 New warehouse receipt.

Upon demand by the lawful holder of a receipt for cotton involved in an appeal under §§ 735.75 through 735.85, the licensed warehouseman shall surrender to such holder the original cotton appeal certificate issued in such appeal, and, if the grade or other class shown by such certificate be different from that shown by the receipt, shall, upon the return of the old receipt, issue a new receipt stating the grade or other class shown by such cotton appeal certificate.

§ 735.85 Disposition of samples.

Samples submitted in appeals under this part may be used for the purposes of the Department or disposed of in accordance with the property regulations of the Department, and the proceeds, if any, covered into the Treasury of the

United States as miscellaneous receipts, or may, at any time, in the discretion of the Administrator, be returned to the complainant at his expense.

MISCELLANEOUS

§ 735.86 Bonds required.

Every person applying for a license, or licensed, under section 9 of the act, shall, as such, be subject to all portions of these regulations so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of cotton and to store the same in any of said warehouses may, in lieu of a bond or bonds, complying with §§ 735.11 and 735.12, file with the Secretary a single bond meeting the requirements of the act and regulations in such form, and in such amount not less than \$5,000, as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of cotton and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any renewals or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed, a further amount, fixed by him, to meet such conditions.

§ 735.87 Publications.

Publications under the act and the regulations in this part shall be made in such media as may be deemed proper by the Administrator.

[62 FR 33540, June 20, 1997]

§ 735.88 Information of violations.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 735.89 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 735.90 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 735.91 Assets and bond; combination warehouses.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 735.92 Amendments.

Any amendment to, or revision of this part, unless otherwise stated therein, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

§ 735.93 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 735) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0120.

[53 FR 27151, July 19, 1988]

§§ 735.94-735.99 [Reserved]

ELECTRONIC WAREHOUSE RECEIPTS

§ 735.100 General statement.

The regulations in §§ 735.100 through 735.105 give a USWA licensed warehouseman the option of issuing EWRs instead of paper warehouse receipts for the cotton stored in its facility. EWRs may only be created through a provider who is approved by the Service.

[59 FR 15038, Mar. 31, 1994, as amended at 62 FR 33540, June 20, 1997]

§ 735.101 Electronic warehouse receipts.

(a) EWRs issued pursuant to this part establish the same rights and obligations with respect to a bale of cotton as a paper receipt. With the exception of the requirement that warehouse receipts be issued on paper (§ 735.19), all other requirements applicable to paper warehouse receipts shall apply to EWRs, unless otherwise specified. The person identified as the "holder" of an EWR shall be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

(b) EWRs must be issued as single bale receipts.

(c) EWRs may only be issued through a provider.

(d) Warehousemen must notify all holders of cotton receipted by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by the Secretary.

(e) Licensed warehousemen may cancel EWRs only when they are the holder of such receipts.

(f) Licensed warehousemen, only as holder, may correct information on the EWR.

(g) Only the holder of the receipt may transfer the receipt to a new holder.

(h) The identity of the holder must be included as additional information for every EWR.

(i) An EWR shall only designate one entity as a holder at any one time.

(j) An EWR shall not be issued for a bale of cotton if another receipt, paper or electronic, on such bale is outstanding. No two warehouse receipts issued by a licensed warehouse may have the same receipt number.

(k) Prior to issuing EWRs, each warehouseman shall request and receive from the Service a range of consecutive warehouse receipt numbers which the warehouseman shall use for the EWRs it issues.

(l) If a warehouseman has a contract with a provider, all warehouse receipts issued by the warehouseman shall initially be issued as EWRs.

(m) An EWR may only be issued to replace a paper receipt if the current holder of the warehouse receipt agrees.

(n) Licensed warehousemen must inform the Secretary of the identity of their approved provider 60 calendar days in advance of issuing warehouse receipts through that provider. The Secretary may waive or modify this 60 day requirement.

(o) Holders and licensed warehousemen may authorize any other user of a provider to act on their behalf with respect to their activities with such provider. Such authorization must be in writing, acknowledged, and retained by the provider.

(p) Provisions of § 735.18 shall be applicable to lost or destroyed EWRs.

[59 FR 15038, Mar. 31, 1994, as amended at 62 FR 33540, June 20, 1997]

§ 735.102 Provider requirements and standards for applicants.

(a) *Financial requirements.* All providers to be approved under this part must meet the following requirements:

(1) Have a net worth of at least \$25,000, and

(2) Maintain two insurance policies; one for "errors and omissions" and another for "fraud and dishonesty". Each policy must have a minimum coverage of \$2 million.

(b) *User fee charges.* Providers shall pay to the Service user fees set by the Service and announced annually prior to April of each calendar year.

(c) *Provider agreement.* The provider agreement shall contain, but not be limited to, the following basic elements:

(1) *Records.* The retention period for records.

(2) *Liability.* The liability of the provider.

(3) *Transfer of records.* The requirements for transferring EWRs to another provider.

(d) *Suspension and termination.* (1) The Secretary may suspend or terminate a provider's agreement for cause at any time.

(2) Hearings and appeals will be conducted in accordance with procedures that are contained in §§ 735.7 and 735.89.

(3) Without specific written authority by the Secretary, suspended or terminated providers may not accept, transfer, or execute any other function pertaining to EWRs during the pendency of any appeal or subsequent to such appeal if the appeal is denied.

(4) The provider or FSA may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to the termination.

(e) *Renewal.* Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in §§ 735.100 through 735.105 and the Act.

(f) *Application form.* Application for a provider agreement shall be made to the Secretary upon forms prescribed and furnished by FSA.

[59 FR 15039, Mar. 31, 1994, as amended at 62 FR 33540, June 20, 1997]

§ 735.103 Audits.

(a) The provider must submit to the Secretary an annual audit level financial statement that meets the requirements of § 735.5 with the exception of §§ 735.5(d)(1), (e), (g), and (h); and an electronic data processing audit. These audits shall encompass the provider's fiscal year. The completed audits shall be submitted to the Secretary no later than four calendar months following

the end of the provider's fiscal year. The electronic data processing audit shall result in an evaluation as to current computer operations, security, disaster recovery capabilities of the system, and other systems.

(b) The provider will grant the Secretary or his designees unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the provider agreement.

[59 FR 15039, Mar. 31, 1994]

§ 735.104 Provider-user relationship.

(a) The provider shall not discriminate among its users regarding use of and access to its CFS and must charge fees on an equal basis to all users for its services.

(b) The provider must furnish the Secretary with copies of its current schedule of fees for all services and charges as they become effective.

(c) Fees charged any user by the provider must be in effect for a minimum period of one year.

(d) Providers must furnish the Secretary and all users a 60 calendar day advance notice of their intent to change any fee.

[59 FR 15039, Mar. 31, 1994]

§ 735.105 Security.

(a) Security must be in accordance with the standards set out in the provider agreement.

(b) Security copies of the system are to be maintained off-site. Both on-site and off-site record security must be maintained.

[59 FR 15039, Mar. 31, 1994]

PART 736—GRAIN WAREHOUSES

DEFINITIONS

Sec.

736.1 Meaning of words.

736.2 Terms defined.

WAREHOUSE LICENSES

736.3 Application form.

736.3a All facilities to be licensed or exempted.

736.4 Scales; bin numbers.

736.5 [Reserved]

736.6 Financial requirements.

736.7 Grounds for not issuing license.